IN THE

Supreme Court of the United States

OCTOBER TERM, 1961.

No. 717

PAUL CRUMP,

Petitioner,

vs.

FRANK G. SAIN, Sheriff,

Respondent.

PETITIONER'S REPLY BRIEF.

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Respondent's Brief in Opposition has completely fogged the issues which the uncontroverted facts in the record present. This effect has been achieved by omitting reference to critically important circumstances which are clear in the record.

Respondent makes no mention of the fact that petitioner made *two* confessions, not just one. Yet this fact is crucial for two reasons:

(1) Petitioner's first confession was made after more than eight hours of continuing interrogation and line-up exhibitions during which time he was held incommunicado. At the beginning of this period he had been sick in bed with a temperature of 103.6°. During this period he was interrogated by at least four of the top law enforcement officials in Cook County, being passed from Lt. McMahon to Lt. Olsen, to Prosecutor Austin, to Lt. Olsen and Prosecutor Bloch, to Prosecutor Austin again.

At the end of this session petitioner confessed. He was not cautioned or advised of his rights prior to this confession. These facts are clear and undisputed. See pages 15 to 19 of the Petition for Certiorari.

(2) At the time the prosecuting authorities obtained this first confession, they had abundant evidence with which to indict and convict petitioner of murder. They had not only the confession, but "three or four" eye witness identifications. (Ex. A, Abst. 433, Prosecutor Austin). From that moment on, it is clear that the authorities "were not merely trying to solve a crime, or even to absolve a suspect." *Spano* v. *New York*, 360 U.S. 315, 323 (1959).

What the authorities were out to do was to cinch the conviction of petitioner and maximize his sentence on the basis of testimony from his own lips which they knew full well could never be obtained in open court or in the presence of counsel. Although the authorities had already succeeded in inducing their fever-ridden prisoner to accuse himself of participation in the murder-robbery, they were bent upon placing the murder weapon in his hands, so that his sentence might be increased. This is the only possible explanation for their acts, since it is clear under Illinois felony-murder doctrine that a confession to participation in a robbery in which a killing has occurred is a confession to murder, without regard to who fired the fatal shot. *People* v. *Marshall*, 398 Ill. 256, 262-63 (1947); *People* v. *Watt*, 380 Ill. 610, 616 (1942); *People* v. *Anderson*, 239 Ill. 168, 184 (1909).

At noon on the day following petitioner's first confession, on the advice of his attorney in the presence of the First Assistant State's Attorney of Cook County, petitioner invoked his undoubted right to remain silent. See Petition for Certiorari, pp. 20-21.

Of course it is simpler to cinch a conviction in the absence of a defendant's counsel than in his presence. And it is far easier to do so by over-riding the prisoner's claim to his constitutional right to remain silent than by respecting it. So instead of placing petitioner in jail pending indictment, or taking him before a judge or magistrate, the prosecution took him to a "lockup room" downstairs, sat him down at a table, handcuffed him to a chair, and resumed its preparation for trial, by continuing petitioner's cross-examination for another eight hours or so. See Petition for Certiorari, pp. 21-22.

At the end of this session, the prosecution was ready to go back "on the record" once more. Of course there is some confusion about what transpired next. As respondent correctly points out, "the circumstances surrounding [petitioner's] second request [for counsel] are disputed." Brief in Opposition, p. 16. The "circumstances surrounding" the request may be disputed, but the request itself is not. And the disputation is caused by the prosecution's own act in staying "off the record' for a time even after the court reporter, who had been called to take the second confession, was actually in the room. See Petition for Certiorari, pages 22-23.

But even after the *second* confession had been obtained, the prosecution had not finally cinched the conviction. For that, a "jury" was needed.

And so a jury (at least one of whose members had been "standing by" for days, see Petition for Certiorari, p. 26, n. 140) was selected and assembled to attest to the last act of this travesty on fair procedure. Some 20 to 40 policemen, prosecutors, physicians, lawyers, executives, and officials were present at the signature ceremony. All that was lacking was a judge, a clerk, and a

lawyer for the defendant. Petition for Certiorari, pages 25-26.

When the ceremony was ended, so, for all practical purposes, was the trial. Notwithstanding the hotly contested proceedings yet to be gone through, petitioner was a convicted man when he walked out of the room where he had signed the second confession.

At the very least, the assertion that this pre-trial discovery and perpetuation of testimony procedure was fundamentally unfair is not frivolous. It deserves plenary consideration by this Court. When life is at stake, as it is here, such a substantial claim of Constitutional right should not be shrugged off on the basis of the Court of Appeals' casual assumption that petitioner and his prosecutors "were meeting at arms length," after it was decided by the interrogators to ignore petitioner's explicit claim to his Constitutional right to silence. See Opinion, Petition for Certiorari, Appendix A, p. 6a.

The prosecution could not have done this in open court. *People* v. *Jackson*, 23 Ill. 2d 263, 178 N.E. 2d 310 (1961). The police should not be permitted to do it to a man handcuffed to a chair in a lockup; a prosecutor, no matter how dedicated, should not be permitted to do it before a "jury" in his office.

Respectfully submitted,

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